19 47. **File No.** B. Forward Contracts/47. Pts. I & II

K Legal **DEPARTMENT**

B . **BRANCH**

Subject:— A Bill to provide for the regulation and Control of forward Contracts for Prohibition of Option and for certain other purposes in the Province of Bombay.

L. A. Bill no. XLII of 1947

Bombay Act no. LXIV of 1947, Pt. I.

P.66/E..

File No. B. Forward Contracts/47. Pts. I & II.

Std. Sectt. Slip 24 B e.

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C O N T E N T S.

Legal Department File No. B. Forward Contracts /47 Parts I and II

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5C

Office of the R.L.A.

The requisite draft Bill is appended.

2. Clause 2 of the draft Bill provides for the recommendation mentioned in Secretary, F.D.'s note, at page 1 ante, viz., to empower Government to amend the rules submitted by a stock exchange or to frame new rules for it.

3. Clause 3 carries out the second recommendation contained in Secretary, F.D.'s note regarding change in the Directorate of a Board or suppresession of such Board.

4. Clause 4 is intended to carry out the necessary amendments in section 6 of the present Act for the purposes indicated in R.L.A.'s opinions Nos. 6332, dated the 30th November 1937 and 2651 , dated the 24th March 1938 (pp. 3 and 5 ante).

5. The Bill does not require any sanction or recommendation under the Government of India Act, 1935. Nor does it affect any special responsibility of the Governor.

Id/- J.R.D.
14-4

Remembrancer of Legal Affairs.

U.R. to F.D.,No. 3372, dated the 14th April 1938.

PSM. 19/5
4C

A draft of a Bill which provides for the regulation and control of forward contracts which Government intends to move in the present session of the Legislature is sent herewith for the remarks of the Advocate General. The Bill as a whole relates to entry No. 27 'Trade and Commerce etc. in List II of the Seventh Schedule to the Government of India Act, 1935.

2. One point which requires particular consideration is that by sub-clause (5) of clause 4 of the Bill it is proposed to give recognition to the East India Cotton Association, the Native Stock Brokers' Association and the Ahmedabad Stock Brokers' Association and the by-laws of the said Associations are to be deemed to be by-laws of a recognised association within the meaning of the provisions of the Bill. Some of these associations are also companies registered under the Indian Companies Act and according to the Article of Association or their by-laws they have their objects not confined to the Province of Bombay, but which extend to the whole of India. Under entry No. 33 in List I to the Seventh Schedule the incorporation, and regulation of trading corporations with objects not confined to one unit is a Federal subject, while entry No. 33 in List II relating to the incorporation and regulation of corporations with objects confined to the province is a provincial subject. Clause 5 of the Bill relates to the making of by-laws for the management of the Association by a governing body and constitution of such---

of such governing body. Under clause 6 the Provincial Government can have power to make by-law for any of the matters mentioned in clause 5. The question for consideration is whether the Provincial Government can regulate the incorporation of associations or make by-laws for such associations relating to their directorates or governing bodies. It seems that although such associations may be companies and may have their objects as such companies not confined to the Province, it is proposed to give them recognition under the Bill as recognised Associations for the purposes of forward dealings within the Province (see clause 4(3). Their by-laws are also being deemed to be by-laws of recognised associations under clause 4(5) in so far as they relate to objects confined to the Province. It appears that in spite of the fact that as companies the associations may have objects not confined to one unit, clause 4, sub-clauses (3) and (5) of the Bill make it clear that they are being recognised associations for objects confined to the Province. As such recognised associations it would be open to the Provincial Government to make by-laws regarding their incorporation and regulation.

Id/- J.R.D.
29-9

Remembrancer of Legal Affairs.

U.R. to the Advocate General, No. 178- Confl.
dated the 29th September 1939.

PSN. 19/5
4C

Office of the R.L.A.

Clause 7 of the Bombay Forward Contracts Control Bill as it stands at present makes forward contracts in goods void unless they are made subject to and in accordance with the bye-laws of any recognised association made under section 5 or 6 relating to the making of such contracts. The bye-laws made under section 5 or 6 may provide for matters other than those relating to the making of contracts, but under the clause as worded it is only the non-observance of the bye-laws relating to the making of contracts that would make them void. Attention is invited in this connection to R.L.A.'s opinion No. 2651, dated the 24th March 1938. Mr. Shroff's draft goes further than this. His intention seems to be to make all contracts voidable at the option of a client (non-member) if such contracts are made by a member of a recognised association in contravention of any provisions of the Act or any bye-laws made thereunder or of any notices or resolutions of the recognised associations. The idea seems to be that the broker who is a wrong-doer should not be allowed to enforce such contracts but the client should have the option to repudiate them or enforce them at his will. If it is decided to accept Mr. Shroff's draft, clause 7 of the Bill will have to be suitably revised as the intention underlying Mr. Shroff's present draft is not covered by clause 7 of the Bill.

Id/- J.R.D.

5-10

Remembrancer of Legal Affairs.

J.R. to F.D.,No., 10073, dated the 6th October 1939.

PSH. 19/5
4C

Entry 33 makes "the regulation x x x of corporations, whether trading or not, with objects not confined to one unit" a Federal subject. The Memorandum of Association of the East India Cotton Association Ltd., shows that its objects are not confined to one unit, but that the Association has power to do various things all over India. The question for consideration, therefore, is whether the proposed legislation in reference to the Association is legislation appertaining to the regulation of this corporation;.

2. Clause 4(5) and clause 5 of the proposed Bill, having regard to clause (a), (b), and, (c) of sub-clause (2) of clause 5, would clearly be legislation appertaining to the regulation of this corporation. If the word "regulation" were understood not in a narrow sense, viz: the government and control of the Association itself, but in a larger, sense, viz: controlling the activities of the Association, many of the other sub-clauses of sub- clause (2) of clause 5 of the Bill would also be legislation appertaining to the regulation of this corporation.

3. Such legislation would, I think, be clearly incompetent to the Provincial Legislation by reason of Entry 33 in the Federal List. I do not agree with the view suggested that the Provincial Legislature would be competent to pass legislation in reference to regulation of a corporation with objects not confined to one unit, provided that it confines the legislation to something to be done within the unit or the Province.

4. I have made in the margin of the draft of the proposed Bill notes in pencil against several clauses, which may be considered.

Sd/- M.I.Setalvad.

14-10-39

Advocate General.

PSM. 19/5
4C

Office of the R.L.A.

The legislation in this case will regulate and control contracts in securities and other commodities in general and will not be aimed specially at the securities of the Central Government and thatbeing so, it will be within the Provincial xxx competence in virtue of the provisions of sub-sections (2) and (3) of section 100 of the Government of India Act, 1935, read with entry No. 27 in the Provincial List and entry No. 10 in the Concurrent Legislatiwm List. It is no doubt true that the Central Legislature can by virtue of entry 6 in the Federation deal with such matters as part of the law of the public debt of the federation. But the proposed law relating to forward contracts in securities and other commodities will not in thm any way affect the power of the Centre in the matter of public debts are subject of trade and commerce within the Province, it would be competent to the Provincial Government to regulate such trade and commerce, although such regulation may affect dealing in securities of the public debt of the Centre. The principle applicable to such cases is that if a subject falls within the Provincial field, the Provincial Legislature will have power to legislate in regard to them, although such legislation may incidentally affect any of the subjects falling under the Central List. This principle has been well established in several decisions of the Privy Council relating to Canadian and Australian Constitutions (Citizens Insurance Company Vs. Parsons, 7 App. Cases 96; Bank of Toronto Vs. Lambe, 12 App. Cases 575; Colonial Building Association Vs. Attorney-General for Quebec, 9 App. Cases 157). In a very recent case in Ladore Vs. Bennett (1939) A.E.R. 98, it was also held that a Province could legislate in regard to the liquidation or insolvency of municipal institutions over which it has complete jurisdiction, although the law of

bankruptcy or---

bankruptcy or insolvency was outside the Provincial field. It may be added in this connection that under the law as it stands at present under the Bombay Securities Contracts Control Act, 1925, the Provincial Government has power to regulate dealings in all stocks, shares and securities including the Securities of the Central Government. The control under the Act is regard to all securities including those of the Central Government is entirely left to the Provincial Government and even the Parliament in making adaptations in the Act by the Order in Council under section 293 of the Government of India Act, has retained the power to enforce the Act to the Provincial Government, obviously on the ground that the subject relates to the trade and commerce within the Rx Province. If, however, the Central Legislature makes any law relating to contracts in their securities in exercise of its powers under entry No. 10 in the Concurrent List, the Act of the Provincial Legislature will have to give way to the provisions of such Act. But there is in fact no such Act in existence.

Id/- J.R.D.
16-10

Remembrancer of Legal Affairs.

No. 203 -Confl.
17-10-39

H.M.,H.&L.D.

PBM. 19/5
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I agree generally with the view expressed by the R.L.A. in his Note.

2. The proposed legislation will not be covered by Entry No. 6 in List I. It will not be legislation in regard to the Public Debt of the Federation. No doubt, the public Debt of the Federation consists, in part, of securities issued by the Central Government, and the proposed legislation will regulate or control contracts relating to those securities and trade in these securitie Such legislation, however, though it may incidentally affect securities issued by the Central Government for the purposes of Public Debt, cannot be said to be covered by Entry No. 6.

3. It would be competent to the Provincial Legislature under Entries Nos. 27 and 10 of Lists II and III respectively to enact the proposed legislation, notwithstanding the fact that such legislation relates to ~~xxvxxixxx~~ securities issued by the Central Government for the purposes of its Public Debt.

Sd/- M.I.Setalvad.

9-11-39

Advocate General.

PSM. 19/5
4C

Bills.
A Bill to amend the
Bombay Cotton Contracts Act, 1932.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 10907.
Bombay Castle, 24th October 1939.

Memorandum from the Finance Department dated the 24th October 1939 --- Transferring for necessary action, the papers relating to a Bill to amend the Bombay Cotton Contracts Act, 1932.

RESOLUTION:-- The Bill with the Statement of Objects and Reasons should be forw arded to the Superintendent, Government Printing and Stationery, Bombay, for publication in the Bombay Government Gazette, dated the 24th October 1939 as L.A. Bill No. XXXIV of 1939.

2. The Bill and the Statement should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette on the 25th October 1939.

3. The dates of the various publications should be reported to the Secretary to the Bombay Legislative Assembly and Legal Department.

By order of the Governor of Bombay,

Sd/- S.D.Palekar.

for { J.R.Dhurandhar,
Secretary to Government.

To

The Superintendent, Government Printing and Stationery, Bombay (with the Bill and S.O.R. and with a request that 200 Gazette copies of the Bill and the Statement may be forwarded to the Secretary to the Bombay Legislative Assembly for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department).

The Finance Department,
The Oriental Translator to Government,
The Secretary tothe Bombay Legislative Assembly,.

} With a copy of the Bill and S.O.R.

Office of the R.L.A.

A fresh copy of the Forward Contracts Control Bill, corrected in order to restrict its application to contracts relating to cotton and securities is appended The follow ing changes have been made:-

2 In the long title and first paragraph in the preamble after the word "contracts" the words Krelating to cotton and securities" have been inserted. After the word "options" the words "in cobhen and options in securities" have been inserted.

2. Clause 1.:- The title has been changed from "the Bombay Forward Contracts Control Act", ~~the name~~ to "the Bombay Cotton and Securities Forward Contracts Control Act". The necessary consequential change in the title has been made in the notification for publishing the Bill for eliciting objections or suggestions from public.

3. Clause 2:- For the last sentence the following has been substituted:

> "The Provincial Government may, by notification in the Official Gazette, direct that the Act shall come into force in its application to contracts for the purchase of sale of or relating to cotton or securities or both in such area and on such date as may be specified in the notification".

4. (1) Clause 3 : -- For the words "any kind of goods in sub-clause (1), "any goods" in sub-clause (2) and "goods" in sub-clause (3) the words "cotton or securities" have been substituted.

(2) Clause 3(4) is unnecessary and has been omitted.

(3) Clause 3(5) has been renumbered aselause3(4).

4) Clause 3(6) has been renumbered as clause 3(5) and

recast restricting its application to contracts for the purchase or sale of or relating to cotton or securities or both. Instead of the expression 'Notified local area' the expression "Notified area" is defined in this clause and used in the Bill.

(5) For clause 3(7) two new clauses 3(6) and 3(7) giving separate definitions of "Option in cotton", and "Option in securities" have been substituted.

(6) In clause 3(8) the words "in respect of any particular kind of goods" have been omitted.

5. (1)Clause 5:- In clauses 5(1), 5(2)(e) and (h) for the word "goods" the words "cotton or securities, as the case may be", have been substituted.

(2) A new provision has been added to clause 5(3) on lines of the proviso to section 5(3) of the Bombay Securities Contracts Control Act, 1925.

6. Clause 6(2), proviso:- After the word "bye-laws" the words "or addition to, variation or rescission of, bye-laws" have been ~~xxbx~~ inserted.

7 (1)Clause 7 :- The opening portion of clause 7(1) has been recast so as to restrict it to forward contracts made or to be performed in any area in which the Act is in force in its application to such contracts.

(2) In clause 7(1)(a) the words "for such goods" have been omitted.

(3) The attention of F. D. is invited in this connection to the amendment of section 6 of the Bombay Securities Contracts Control Act, 1925 furnished in clause 4 of the draft Bill supplied to F.D. with R.L.A.'s opinion No. 3372 dated 14th April 1938 and that Department is requested to consider whether a similar amendment should be made in clause 7 of the present Bill.

8. Clause 8:- For the words "any goods" the words "cotton and all options in Securities " have been

have been substituted and for the words "on which this Act comes into force" the words "of the commencement of this Act" have been substituted. The necessary consequential amendment has been made in the marginal note.

9. Clause 9.:-- Clause 9 has been renumbered as sub-clause (1) of that clause and the paragraphs (1) to (4) thereof have been relettered as (a), (b), (c) and (d). A new sub-clause (2) has been added providing that the provisions of sub-section (1) shall apply in any notified area in respect of such forward contracts inapplication to which the Act is in force in such area.

10. Clause 10 :- For the words "this Act comes into force" the words "of the commencement of this Act" have been substituted.

11(1Clause 11.:- In clause 11(1)(b) for the words "any goods" the word"Cotton" has been substituted.

(2) For the words "in this section" the words "in this sub-section" have been substituted.

(3) Sub-clause (2) is unnecessary and has been omitted and sub-clause (3) has bee renumbered as sub-clause (2).

12 The draft Statement at pages 175-176 as amended by Secretary, F.D. and as further revised is legally in order.

Id/- P.N.M.
3/12

U.R. to F.D., No. 10423, dated the 4th December 1941.

PSM. 21/5
4C

Office of the R.L.A.

Statement of the Case.

Attention is invited to sub-clause (4) of clause 4 of the Bombay Forward Contracts Control Bill 1947, which is proposed to be deleted. In respect of this sub-clause an important question has arisen as to the competency of the Provincial Legislature to make this provision. The East India Cotton Association, Limited, is apparently registered under the Companies Act and is a multi-unit company in the sense that it is entitled to carry on its operations even beyond the Province of Bombay. In his opinion dated 14/10/1939 (copy appended) the then Advocate General, has inclined to think that the legislation which involves the regulation of this corporation the Federal List. He was not inclined to agree with the view then suggested that the Provincial Legislature would be competent to pass legislation in reference to the regulation of a corporation with its objects not confined to one unit. The doubt on this question must be resolved because the recognition of this Association is fundamental part of the whole scheme. One method of getting out of this difficulty is not to give immediate recognition in the statute itself to the Association but to leave it to the Association and other limited companies to approach Government for recognition under clause 4(1) by suitably modifying their present constitution. The sub-clause has therefore beendeleted provisionally. However as the point is an ximporta nt one, the Advocate General is requested to favour Government with his opinion on this question as early as possible. The Advocate General is also requested to offer his remarks on the Bill generally.

Id/- D.V.V.

Remembrancer of Legal Affairs

U.R. to Advocate General Bombay No. 7335, dated the 17th July 1947.

PSM. 21/5
4C

Office of the R.L.A.

A revised draft Bill as amended in consultation with the Finance Department is sent herewith.

2. Clauses 1 and 2 of the Bill :- A new sub-clause (2) has been added to clause 1 of the Bill to bring sections 1, 2, 3 and 9 into force at once; and sub-clause (2) of clause 2 has been amended to empower Government to bring the remaining provisions in force in any area.

3. Sub-clause (4) of clause 4 :- In respect of this sub-clause an important question arises as to the competency of the Provincial Government to make this provision. The East India Cotton Association, Limited, is apparently registered under the Companies Act and is a multi-unit company in the sense that it is entitled to carry on its operations even beyond the Province of Bombay. Please see in this connection the opinion given by M. C. Setalvad, the then Advocate General, on 14th October 1939 where in he was inclined to think that the legislation which involves the regulation of this corporation would not be competent to the Province by reason of entry 33 in the Federal List. He was not inclined to agree with the view then suggested that the Provincial Legislature would be competent to pass legislation in reference to the regulation of a corporation with its objects not confined to one unit. The doubt on this question must be resolved because the recognition of this Association is a fundamental part of the whole scheme. One method of getting out of this difficulty is not to give immediate recognition in the statute itself to the Association but to leave it to the Association and other limited companies to approach Government for recognition under clause 4(1) by suitably modifying their present constitution. The sub-clause has therefore been deleted.

4. Finance Department Clause 5. : Sub-clauses (i) and

and (n) have --

(n) have been recast and clause (p) deleted as being unnecessary.

5. Finance Department Clause 7 : It is proposed to add a penal section to this clause. If such section is added, the provisions of this clause would be very inconsistent indeed. For, under clause 7(1)(b) the contract is being declared void (or illegal) only as regards the rights of any member of the recognised association. Presumably, therefore, the rights of other persons interested in the contract would be preserved. Similarly, clause 7(2) applies only to a claim etc. on behalf of such member which would again mean that claims by other persons are left untouched. It is nevertheless proposed to make it penal for any person to enter into such contracts. In other words, civil rights of certain class classes of persons in respect of contracts which are being declared crimes are being preserved. The clause has therefore been suitably amended and a new sub-clause (2) prescribing penalty added.

6. The new clause 7A proposed by the Finance Department should find its proper place after clause 4, since it relates to questions of constitution. It has been inserted as clause 5 and the subsequent clauses renumbered. Clause 4 contemplates governing bodies rather than the Board of Director. The words "governing body" have been used throughout the revised clause 5.

7. Recised clause 9 : A penalty clause has been added. Section 6(2)(a) of the Bombay Cotton Contracts Act, 1932, gave power to the Board of Directors to make by-laws to provide for regulating the making, performance and cancellation of options in cotton. However section 4 of the Bombay Options in Cotton Prohibition Act, 1939 (Bom.XXV of 1939) provides that notwithstanding anything,

contained----

contained in the Bombay Cotton Contracts Act, 1932, all options in cotton entered into after the date on which the former Act comes into force shall be void. The 1939 Act having been made during the section 93 regime will continue to have effect till 2nd April 1948 unless repealed earlier. Since options in all goods are being declared illegal by clause 9(1) of the draft Bill, it would be necessary to repeal the said Act of 1939. This has been done by adding the following sub-clause to clause 9:-

Bom. XXV of 1939.

"(3) The Bombay options in Cotton Prohibition Act, 1939, is hereby repealed."

8. F.D. Clauses 10 has been recast to fit in with sub-clause (2) of clause 1 and amended sub-clause (2) of clause 2.

9. The Government of India in exercise of the powers conferred by rule 81(2) of the Defence of India Rules has issued an order called the Indian Cotton (Control) Order, 1945, which provides inter alia that all contracts and options in cotton entered into or made after the commencement of that order in contravention of clause 3 of that order shall be void. Under clause 3 of the Order no person shall enter into any option in cotton, save as subject to clause 5. Clause 5 refers to the powers of the Textile Commissioner to exclude from the operation of the order any class or description of contracts. Then section 5A empowers the Textile Commissioner to direct any person to sell cotton in his possession. The entry "cotton" having been added to the Schedule to the Bombay Essential Commodities and Cattle (Control) Act, 1946 (Bom; XXII of 1946) by G.N,GS.D. No. 805/IV, dated 1/10/1946) cotton is an essential commodity within the meaning of that Act. Section 5 of that Act provides inter alia that every order made under the Defence of India Rules in respect of any essential commodity which was in force immediately before the

commencement-----

commencement of that Act shall in so far as it could validly have been made under that Act be deemed to have been made thereunder. As "cotton" was declared an essential commodity on 1/10/1946, the Cotton Control Order, 1945, can be deemed to have been made and continued under the Bombay Essential Commoditiee and Cattle (Control) Act , 1946. It would therefore be necessary to annual the said order. However the order in question provides for several matters and may be repealed in so f ar as it prohibits options in cotton. The order can be repealed by issuing a notification under the Bombay Essential Commodities and Cattle (Control) Act, 1946. This may be considered by the F. D.

10. The subject-matter of the Bill falls under entry 27 in List II and entry 10 in List III in the 7th Schedule to the Government of India Act, 1935. The Bill does not require any sanction or recommendation under that Act or does not affect any of the special responsibilities of the Governor under section 52(1) of that Act. As the Bill does not relate to any matter falling in List III in the Seventh Schedule it would not be necessary to r eserve the s ame for the considera tion of the Governor-General with reference to section 107(2) of the Government of India Act.

Id/- D.V.V.

Remembrancer of Legal Affairs.

U.R. to F.D.,No., 6996, dated the 9th July 1947.

PSM. 21/5
4C

No. 48 of 1947.

ADVOCATE GENERAL's CHAMBERS,
HIGH COURT,

Bombay, 5th September, 1947.

U.O.R. to the Advocate General of Bombay,
No. 7335 dated the 17th July 1947.

OPINION.

Sub-clause (4) of Clause 4 by itself may not offend against entry 33 of the List I, since "recognition" by itself is not necessarily "regulation", but the provisions of that Clause read with Sub-clause, 5, and Clause 7, constitute "regulating" of the Associations concerned, and in my opinion would be incompetent to the Provincial Legislation.

I see no objection to the passing of an act, without the offending provisions and leaving it to the associations to conform to the act if they so desire.

Sd/-

Advocate General.

PSM. 21/5
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No. 11777

Legal Department,

Bombay Castle 8th December 1947.

From

P.M.Lad, Esquire , I.C.S.

Secretary to the Government of Bombay.

To

The Private Secretary to the Governor of Bombay.

Subject:-- A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

Sir,

With reference to section 75 of the Government of India Act, 1935, I am directed to forward herewith for being presented to His Excellency the Governor, the authentic copy of the Bill to provide for the regulation and Control of forw ard contracts, for prohibition of options and for certain other purposes in the Province of Bombay, which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council held on the 5th and the 6th November 1947, respectively.

2. The subject-matter of the Bill falls under entries 27 and 37 in List II and entries 1, 2, 4 and 10 in List III in the seventh Schedule to the Government of India Act, 1935.

3. As the provisions of the Bill ~~thm~~ are repugnant to the Provisions of the Indian Contract Act, 1872, the Bombay Securities Contracts Control Act, 1925, the Bombay Cotton Contracts Act, 1932, and the Bombay Options in Cotton Prohibition Act, 1939, which are existing laws relating to entry 10 in the Concurrent Legislative List,

List, it is ---

List, it is necessary to reserve the Bill for the consideration of the Governor-General with reference to section 107(2) of the Government of India Act, 1935.

4. I also forward herewith six copies of each of

1. Bill as introduced in the Bombay Legislative Assembly with the Statement of Objects and Reasons.	the items ~~Nxxx~~ X ~~Xx X xxx~~
2. Report of the Select Committee together with the Bill as amended by the Select Committee.	Nos. 1 to 4 and
3. Bill as read for the third time and passed by the Bombay Legislative Assembly and as introduced in the Bombay Legislative Council.	two copies of item No. 5 of
4. Bill as read for the third time and passed by the Bombay Legislative Council.	the papers noted in
5. Extracts from the proceedings of the Bombay Legislative Assembly dated the 25th, 26th, 27th September, and 4th and 5th November 1947 and of the Bombay Legislative Council dated the 6th November 1947.	the margin.

~~I~~ have the honour to be,

Sir,

Your most obedient servant,

Id/- P.M.L.

Secretary to ~~the~~ Government.

Through

The Secretary to the Government of Bombay
Finance Department.

PSM. 21/5
4C

No. P.S.G. --5786

Office of the Private Secretary to the Governor,
Government House,
Bombay, 13th December 1947.

From

L.E.Bagshawe, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to the Bombay Legislative Department,
Council Hall, Bombay.

Subject:- The Bombay Forward Contracts Control Bill, 1947.

Sir,

With reference to the above-mentioned Bill which was read for the third time and passed at the meetings of the Bombay Legislative Assembly and the Bombay Legislative Council on the 5th and 6th November 1947, respectively, I am directed to state, for the information of the Honourable the Speaker and the Honourable the President, that as the provisions of the Bill are repugnant to the provisions of the Indian Contract Act, 1872, the Bombay Securities Contracts Control Act, 1925, the Bombay Cotton Contracts Act, 1932, and the Bombay Options in Cotton Prohibition Act, 1939, which are ~~xx~~ existing laws relating to entry 10 in the Concurrent Legislative List, it is necessary to reserve the Bombay Forward Contracts Control Bill, 1947, for the consideration of His Excellency the Governor-General with reference to section 107 (2) of the Government of India Act, 1935. His Excellency the Governor is accordingly pleased, under section 75 of the Government of India Act, 1935, to declare that he reserves the Bill for the consideration of His Excellency the Governor-General.

~~I have~~ Your obedient servant,

Sd/- L. E. Bagshawe.

Private Secretary to the Governor of Bombay.

No. P.S.G. --5787
Office of the Private Secretary to the Governor,
Government House,
Bombay, 13th December 1947.

Copy forwarded with compliments for information to-

(1) Secretary to Government, Legal Department, with reference to his letter No . 11777, dated the 8th December 1947;

(2) The Secretary to Government, Finance Department, with reference to his endorsement No. 4132/33-D, dated the 10th December 1947.

By order of the Governor of Bombay,

Sd/- L.E.Bagshawe,
Private Secretary to the Governor of Bombay.

SM. 21/5
4C

No. P.S.G. -- 803
Office of the Private Secretary to the Governor,
Government House,
Bombay, 11th February 1948

From

L.M.Nadkarni, Esquire, I.C.S.,
Private Secretary to the Governor of Bombay.

To

The Secretary to Government,
Legal Department.

Subject:-- The Bombay Forward Contracts Control Bill, 1947.

Sir,

In continuation of this Office letter No. P.S.G.--475, dated 5th February 1948, on the subject noted above I forward herewith the authentic copy of the Bombay Forward Contracts Control Bill, 1947, with His Excellency the Governor-General's assent signified thereon.

Your obedient servant,

Sd/-

For Private Secretary to the
Governor of Bombay.

PSM. 21/5
4C

Bills.

A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 9071.
Bombay Castle, 6th September 1947.

Memorandum from the Finance Department dated the 6th September 1947. -- Transferring for necessary action the papers relating to a Bill to provide for the regulation and control of forward contracts and for certain other purposes in the Province of Bombay.

RESOLUTION :-- The Bill with the Statement of Objects and Reasons should be forwarded to the Manager, Government Printing Press, Bombay, for publication in the Bombay Government Gazette, dated the 6th September 1947, as Bill No. XXII of 1947.

2. The Bill and the Statement of Objects and Reasons be translated into Marathi, Gujarati and Hindustani (in Urdu and Devanagari scripts) and the translations should be published in the Bombay Government Gazette, dated the 20th September 1947.

3. The dates of the various publications should be reported to the Bombay Legislative Department.

By order of the Governor of Bombay,

Sd/- [illegible] Palekar,

Deputy Secretary to the Government.

To

The Manager, Government Central Press, Bombay (with the Bill and Statement of Objects and Reasons and he is requested that 240 copies of the Bill and the Statement of Objects and Reasons may be forwarded to the Bombay Legislature Department for distribution to the Members of the Bombay Legislative Assembly and 25 copies for the use of the Legal Department 20 copies for the use of the Finance Department.)

The Finance Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Ex-Director of Publicity, Bombay,
} with a copy of the Bill and C.J.R.

P.S. 21-5
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Acts: Publication of the Bombay Forward Contracts Control Act, 1947.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 1348.
Bombay Castle, 7th February 1948.

Letter to the Private Secretary to the Governor, No. 11777, dated the 8th December 1947.

Letter from the Private Secretary to the Governor, No. PSG. -475, dated the 5th February 1948.---

"With reference to this Office endorsement No. P.S.G. 5787, dated the 13th December 1947, on the subject mentioned above, I am directed to inform you that intimation has been received from the Secretary to the Government of India, Ministry of Home Affairs, that His Excellency the Governor-General assented to the Bombay Forward Contracts Control, Bill, 1947, on the 30th January 1948".

RESOLUTION: -- The law should be published as Bombay Act No. LXIV of 1947, in the Bombay Government Gazette dated the 7th February 1948.

2. The Act should be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations should be published in the Bombay Government Gazette.

3. A copy of the Act should be forwarded to the Finance Department.

By order of the Governor of Bombay,

Sd/- S.L.Chaudhari,
Assistant Secretary to the
Government of Bombay, Legal
Department.

To

The Manager, Government Printing Press, Bombay, (with a copy of the Act and with a request that 30 Gazette copies of the Act may be forwarded to the Legal Department).
The Finance Department,
The Oriental Translator to Government,
The Bombay Legislature Department,
The Director of Publicity,
The Enquiry Officer for the Secretariat, Bombay.
) With a copy of the Act.

PSN. 21/5
4C

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[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following Bill is published under the proviso to rule 80 of the Bombay Legislative Assembly Rules :—

L. A. BILL No. XLII OF 1947.

A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

WHEREAS it is expedient to regulate and control forward contracts, to prohibit options and to provide for certain other purposes hereinafter appearing; it is hereby enacted as follows :—

Short title and operation.

1. (*1*) This Act may be called the Bombay Forward Contracts Control Act, 1947.

(*2*) This section shall come into force at once.

(*3*) The Provincial Government may by notification in the Official Gazette direct that all the remaining provisions other than sections 4, 5 and 7 shall come into force in such area and on such date and in their application to such goods as may be specified in the notification.

(*4*) The Provincial Government may also by notification in the Official Gazette direct that the provisions of section 4, 5 or 7 shall come into force in such area and on such date and in their application to such goods as may be specified in the notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Association" means any association, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling

business of the sale or purchase of, or other transactions relating to, any goods;

(2) "Contract" means a contract made or to be performed in whole or in part (in any notified local area) relating to the sale or purchase of any goods to which this Act applies:

Provided that the Provincial Government may by notification in the Official Gazette direct any contract to be excluded from the provisions of this Act;

(3) "Forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(4) "Goods" means any kind of moveable property and includes securities but does not include money or actionable claims;

(5) "Government security" means a Government security as defined in the Indian Securities Act, 1920; X of 1920.

(6) "Notified local area" means any local area in which section 3 is brought into force under sub-section (3) of section 1;

(7) "Option in goods" means a contract for the purchase or sale of a right to buy, or a right to sell, or a a right to buy or sell goods in future and includes a *gully*, a *teji*, a *mandi*, or a *teji-mandi* in goods;

(8) "Ready delivery contract" means a contract which provides for delivery and payment of price within such number of days after the date of the contract and under such conditions as the Provincial Government may, from time to time, by notification in the Official Gazette, specify in this behalf in respect of any particular goods;

(9) "Recognised association" means an association which is for the time being recognised by the Provincial Government as provided in section 3;

(10) "Securities" includes shares, scrips, stocks, bonds, debentures, debenture stocks, or other marketable security of a like nature in or of any incorporate company or other body corporate and Government securities.

Recognition.

3. (1) Any association desirous of being recognised for the purposes of this Act shall make an application in writing to the Provincial Government for such recognition and shall, along with the application, submit rules relating to—

(a) the management of the association by a governing body and the constitution of such governing body;

(b) the powers and duties of the governing body and the manner in which its business shall be transacted;

(*c*) the admission of various classes of members by the association and the exclusion, suspension, expulsion and readmission of such members;

(*d*) such other matters as the Provincial Government may by order direct.

(*2*) The association shall also furnish such other information in regard to such association as the Provincial Government may require.

(*3*) If the Provincial Government is satisfied that the rules submitted by the association are suitable in the interest of the trade, the Provincial Government may recognise the association. No alterations or additions shall be made in the rules of a recognised association without the prior approval of the Provincial Government.

(*4*) If the Provincial Government considers that the recognition given to any association should, for any reason in the interest of the trade, be withdrawn, the Provincial Government may, after giving to the association an opportunity to explain why recognition should not be withdrawn, withdraw the recognition given to the said association, and such association shall thereupon cease to be a recognised association:

Provided that such withdrawal of the recognition of any association shall not in any manner affect the validity of any contract entered into in accordance with the bye-laws of such association prior to the date of the withdrawal of the recognition.

Powers of Provincial Government to remove and appoint President, members of governing body, etc.

4. Notwithstanding anything contained in this Act or any other law for the time being in force, the Provincial Government may, if it deems fit,—

(*1*) remove the President or a member of a recognised association;

(*2*) appoint any person, whether a member of a recognised association or not, to be the President or a member of the governing body of such association;

(*3*) supersede any governing body and appoint another governing body for such association.

Power of Provincial Government to make rules and add to, etc., articles of association.

5. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any rules made by a recognised association or may make any rules for all or any of the matters, specified in clauses (*a*) to (*c*) of sub-section (*1*) of section 3, or add to, vary or rescind the articles of association of such recognised association.

(2) Rules, or any addition to, or variation or rescission of rules or of articles of association made under sub-section (1) shall be subject to the condition of previous publication:

Provided that the Provincial Government may in the interest of the trade dispense with the condition of previous publication.

(3) Rules or any addition to or variation or rescission of rules or of articles of association made under this section shall be published in the Official Gazette and shall be deemed to have been made by the recognised association.

Power of recognised association to make, add to, vary or rescind bye-laws.

6. (1) Any recognised association may, subject to the sanction of the Provincial Government, make and, from time to time, add to, vary or rescind bye-laws for the regulation and control of forward contracts in goods for which such association has been recognised.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the times during which such markets shall remain open or closed and regulating the hours of trade;

(b) a clearing house for the periodical settlement of contracts and the differences thereunder and for the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(d) fixing, altering or postponing settling days;

(e) determining and declaring the market rates for goods;

(f) the terms, conditions and incidents of contracts and the forms of such contracts as are in writing;

(g) regulating the making, performance, rescission and termination of contracts, including contracts between a commission agent and his constituent, or between a broker and his constituent or between a *jethawala* or *muccádum* and his constituent or between a member and non-member of the recognised association, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents, *muccadums* and brokers not parties to such contracts;

(h) the prohibition of specified classes or types of dealings in goods by a member of the recognised association;

(i) the method and procedure for settlement of claims and disputes;

(j) the levy and recovery of fees, fines and penalties;

(*k*) regulating the course of business between parties to contracts in any capacity ;

(*l*) fixing of a scale of brokerage and other charges ;

(*m*) the making, settling and closing of bargains ;

(*n*) emergencies and the exercise of powers in such emergencies.

(*o*) the regulation of dealings by members for their own account ;

(*3*) The bye-laws may provide that a contravention thereof shall be punishable with fine not exceeding Rs. 1,000.

(*4*) Bye-laws or any addition to or variation or rescission of such bye-laws made under this section shall be subject to the condition of previous publication unless such condition is dispensed with by the Provincial Government in the interest of the trade and when sanctioned by the Provincial Government shall be published in the Official Gazette.

Power of Provincial Government to make bye-laws.

7. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any bye-laws made by a recognised association under section 6 or may make any bye-laws for all or any of the matters specified in the said section 6.

(*2*) Bye-laws, or any addition to, or variation or rescission of bye-laws made under sub-section (*1*) may provide for the regulation and control of contracts entered into previously to and subsisting at the date of the making of the bye-law, addition, variation or rescission, and all rights and obligations in respect of the said contracts shall thereafter be determined accordingly.

(*3*) Bye-laws or any addition to, variation or rescission of bye-laws made under sub-section (*1*) shall be subject to the condition of previous publication :

Provided that the Provincial Government may, in the interest of the trade, dispense with the condition of previous publication.

(*4*) Bye-laws or any addition to, or variation or rescission of bye-laws made under this section shall be published in the Official Gazette and shall be deemed to have been made by the recognised association.

Illegal contracts and penalty.

8. (*1*) Every forward contract for the purchase or sale of, or relating to, any goods to which the provisions of section 3 apply made or to be performed in any notified local area which is not made—

(*a*) in accordance with the bye-laws made under section 6 or 7 relating to the making of such contracts, or

(*b*) between members or through a member of a recognised association.

shall be illegal and no claim of any description in respect of such contract shall be entertained in any civil court.

(2) Any person entering into such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Options in goods illegal.

9. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force on a notification being issued by the Provincial Government in the Official Gazette, options or such kinds of options in such goods and in such areas as may be specified in the notification shall be illegal.

(2) Any person entering into any option made illegal under sub-section (1) shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Penalty for owning or keeping place used for entering into contracts in contravention of Act, etc.

10. Any person who in any notified local area in respect of goods to which the provisions of section 3 apply—

(1) owns or keeps a place (other than that of a recognised association) which is used for the purpose of entering into forward contracts in goods and knowingly permits such place to be used for such purposes; or

(2) organises or assists in organising or becomes a member of any association (other than a recognised association) established for the purpose of assisting in entering into forward contracts in goods; or

(3) manages, controls or assists in keeping any place (other than that of a recognised association) which is used for the purpose of entering into forward contracts in goods or at which such contracts are recorded or adjusted or rights or liabilities arising out of such contracts or options are adjusted, regulated or enforced in any manner whatsoever; or

(4) not being a member wilfully represents to or induces any person to believe that he is a member of a recognised association or that a forward contract can be entered into under this Act through him, shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Jurisdiction under Act.

11. No court other than that of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence punishable under this Act.

Repeal of enactments.

12. (1) On the date on which an association is recognised under section 3 in any area in respect of securities, the Bombay Securities Contracts Control Act, 1925, and when an association is recognised under section 3 in the City of Bombay and the Island of Salsette in respect of cotton, the Bombay Cotton Contracts Act, 1932, shall cease to have force in such area.

Bom. VIII of 1925.

Bom. IV of 1932.

(2) On the date on which an association is recognised under section 3 in any area in respect of cotton, the Bombay Options in Cotton Prohibition Act, 1939, shall cease to have force in such area.

Bom. XXV of 1939.

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13. (*1*) Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect— Savings.

(*a*) the terms and incidents of any forward contracts in cotton or securities made or effected before the date on which the provisions of this Act come into force and to which the Acts hereby repealed applied;

(*b*) the terms and incidents of any options in cotton made or effected before the date on which the Bombay Options in Cotton Prohibition Ordinance, 1939, came into force;

(*c*) the validity, invalidity, effect or consequences of anything already done or suffered, in case of such contracts before the coming into force of this Act, and in the case of such options before the date of the coming into force of the said Ordinance;

(*d*) any right, title, obligation or liability already acquired, accrued or incurred in regard to such contracts before the date of the coming into force of this Act and in regard to such options before the date of the coming into force of the said Ordinance;

(*e*) any remedy or proceeding in respect of such right, title, obligation or liability;

(*f*) anything done in the course of any proceeding pending in any Court, in case of such contracts on the date of the coming into force of the provisions of this Act and in the case of such options on the date of the coming into force of the said Ordinance, and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

(*2*) The provisions of sub-section (*1*) shall apply to forward contracts for the purchase or sale of any other goods to which the provisions of this Act may, from time to time, be applied under sub-section (*3*) of section 1 entered into before the date on which a notification in respect of such goods may be published under the said sub-section.

STATEMENT OF OBJECTS AND REASONS.

At present Government has no control over forward markets in commodities other than cotton and stocks and shares. The complaint has frequently been made that in view of this lack of control there is often excessive speculation in commodity markets the effects of which have proved disadvantageous both to producers and to genuine traders. The complaint has also been made that such control as Government exercises over the cotton and stock markets under the Bombay Cotton Contracts Act, 1932, and the Bombay Securities Contracts Control Act, 1925, has proved ineffective. These acts provide that forward contracts other than those made through recognised associations are void in law; but experience has shown that such a provision does not go far enough to be effective in actual practice. In fact, forward trading takes place outside recognised associations and in a manner which is detrimental to genuine tread

interests.. The Report of the Committee of the Cabinet on the control of forward trading in cotton in this Province contains the recommendation that Government should, in order to make its control more effective, take power to impose bye-laws on a recognised association in all matters, to nominate the President or one or more members of the Board and to supersede the entire Board of such association. The Committee has also recommended that contracts not in accordance with the bye-laws of a recognised association should not merely be void as at present but be made illegal and parties thereto rendered liable to punishment, and further that it should be a penal offence for any person to organise, assist in organising or be a member of an unrecognised association. The Bill while consolidating the present law regarding control of forward markets, also incorporates provisions on the lines recommended by the Committee, for tightening up Government control over such markets. Further, it enables, Government to extend the Act or certain parts of it not only to cotton and stocks and shares but also to other goods and to such areas as it may specify in a notification. Clauses 3, 6, 8 and 10 which may be notified together under sub-clause (3) of clause 1 of the Bill, provide for the recognition of an association in respect of any commodity and for the prior approval of its bye-laws by Government. Further under these clauses any forward contract not in accordance with the bye-laws of a recognised association is illegal and the organising, managing or becoming a member of an unrecognised association, is a penal offence. Clauses 4, 5 and 7, any or all of which may be notified in addition to the clauses already mentioned, provide for fuller powers which include the powers to impose rules and bye-laws on a recognised association, to nominate the President or one or more members of the Board, or to supersede the entire Board including the President of such association. Clause 9 enables Government to declare that options or such kinds of options in such goods and in such areas as may be notified, shall be illegal.

Dated 6th September 1947.

(Signed) VAIKUNTH L. MEHTA.

By order of the Governor of Bombay,

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department

Bombay, dated the 6th September 1947.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1

The Bombay Government Gazette

PUBLISHED BY AUTHORITY

SUNDAY, 2ND NOVEMBER 1947.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART V

[To be translated into Marathi, Gujarati, Kannada and Hindustani (in Urdu and Devnagari scripts) and the translations to be published in the "Bombay Government Gazette". The dates of publication to be reported.]

The following report of the Select Committee of the Bombay Legislative Assembly on the Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay, and the Bill as amended by the Select Committee are, in accordance with the provisions of sub-rule (3) of rule 88 of the Bombay Legislative Assembly Rules, published for general information :—

L. A. BILL No. XLII OF 1947.

(The Bombay Forward Contracts Control Bill, 1947.)

REPORT OF THE SELECT COMMITTEE.

We, the members* of the Select Committee appointed to consider L. A. Bill No. XLII of 1947 (The Bombay Forward Contracts Control Bill, 1947) have to report as follows :—

We heard the representatives of the interests concerned and had also the benefit of legal advice given by the Advocate General in person. After carefully considering the Bill, we have made the necessary changes therein. The reasons for the principal changes are given below :—

Clause 2, sub-clause (2), proviso.—We have amended this proviso so as to provide for the exclusion of not only any contract but any class of contracts and to provide that such exclusion shall, when necessary, be subject to such conditions as the Government may direct.

Clause 2, sub-clause (8).—We have made the definition of ready delivery contract more definite by providing that the delivery and payment of price thereof shall be either immediate or within such number of days not exceeding seven, as may be specified by Government.

Note.—The signatures of Mr. B. D. Deshmukh, Mr. S. M. Hasan, Mr. Abdul Satar A. Gandhi, Mr. Ahmed A. Patel and Mr. C. S. Patel will be notified when received.

Clause 3, sub-clause (3).—We have added this sub-clause to ensure that an associat.on seeking recognition under the Act, does not become a closed corporation.

Clause 3, sub-clause (4).—Under this new sub-clause, an association seeking recognition can authorise Government to nominate the President and one or more members on its governing body.

Clause 3, sub-clause (4), proviso.—A slight modification has been made in this proviso for purposes of facilitating the due fulfilment of contracts outstanding on the date of withdrawal of recognition of any association.

Clause 4.—This clause has been re-drafted to provide for the supersession of the governing body and the appointment of one or more persons by Government to exercise the duties and powers of the governing body. The clause imposes a period for such supersession and provides for the reconstitution of the governing body at the end of that period. This clause further empowers Government to suspend the business of a recognised association for any specified period which can be extended in case of necessity.

Clause 5.—Under the clause as now modified by us Government will, instead of itself imposing articles or amendments thereto, on a recognised association, require the association to carry out any necessary modifications or additions to its articles of association.

Clause 6, sub-clauses (2) and (3).—In sub-clause (2), we have provided for the making of bye-laws for purposes of regulating the fluctuations in rates and prices while under sub-clause (3) as amended by us, a recognised association can provide in its bye-laws different penalties for contravention of its bye-laws and can also provide that the contravention of specified bye-laws would make the contract void or illegal.

Clause 7, sub-clause (2).—It has now been provided that the retrospective effect proposed to be given under this sub-clause to amendments, additions or variations made by Government to the bye-laws of a recognised association shall not affect contracts entered into or made before a week previous to the date of the making of such amendments, additions or variations to bye-laws.

Clause 8.—Contracts with members of a recognised association will not now be illegal if the previous written authority or consent, which shall be in writing if the bye-laws of such association so provide, of the person entering into or making such contracts is secured.

Clause 10.—The clause, as now amended, permits the organisation of an association with the previous sanction of Government. Two new sub-clauses have been added, to penalise (*i*) touting or advertising or (*ii*) joining, gathering or assisting in gathering with any person or persons, for purposes of doing or securing business relating to forward contracts.

Clause 12.—This provides for offences committed by corporations and firms.

Clause 13.—This clause is on the lines of section 11 of the Bombay Cotton Contracts Act, 1932, and protects the governing body, the office-bearers and servants of a recognised association for acts done by them in good faith.

The last two are new clauses and the subsequent clauses have therefore been renumbered.

The other amendments are either consequential or made with a view to secure uniformity of wording.

(Signed) VAIKUNTH L. MEHTA

(,,) D. N. DESAI,

(,,) S. R. KANTHI,

(,,) BHAWANJI A. KHIMJI,

(,,) R. A. KULKARNI,

(,,) POPATLAL R. SHAH,

(,,) CHANDULAL P. PARIKH,

(,,) RAMNATH PODAR,

(,,) B. D. LALA,

(,,) C. B. MARFATIA.

Note.—Deletions made by the Select Committee are shown in square brackets and additions are shown in italics.

L. A. BILL No. XLII OF 1947.

A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

(As amended by the Select Committee.)

WHEREAS it is expedient to regulate and control forward contracts, to prohibit options and to provide for certain other purposes hereinafter appearing; it is hereby enacted as follows:—

Short title and operation.

1. (*1*) This Act may be called the Bombay Forward Contracts Control Act, 1947.

(*2*) This section shall come into force at once.

(*3*) The Provincial Government may by notification in the *Official Gazette* direct that all the remaining [provisions] *sections* other than sections 4, 5 and 7 shall come into force [in such area] *in the whole of the Province of Bombay or such part thereof* and on such date and in their application to such goods as may be specified in the notification.

(*4*) The Provincial Government may also by notification in the *Official Gazette* direct that [the provisions of] section 4, 5 or 7 shall come into force [in such area] *in the whole of the Province of Bombay or such part thereof* and on such date and in [their] *its* application to such goods as may be specified in the notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Association" means any association, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling business of the sale or purchase of, or other transactions relating to, any goods;

(*2*) "Contract" means a contract *entered into*, made or to be performed in whole or in part in any notified [local] area relating to the sale or purchase of any goods to which this Act applies:

Provided that the Provincial Government may by notification in the *Official Gazette* direct any contract *or class of contracts* to be excluded from the provisions of this Act, *subject to such conditions as the Provincial Government may deem fit to impose;*

(*3*) "Forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(*4*) "Goods" means any kind of moveable property and includes securities but does not include money or actionable claims;

(*5*) "Government security" means a Government security as defined in the Indian Securities Act, 1920; X of 1920.

(*6*) "Notified [local] area" means any [local] area [in which section 3 is brought into force] *specified in the notification* under sub-section (*3*) of section 1;

(*7*) "Option in goods" means a contract for the purchase or sale of a right to buy, or a right to sell, or a right to buy or sell goods in future and includes a *gully*, a *teji*, a *mandi*, or a *teji-mandi* in goods;

(*8*) "*Person*" *includes a firm*;

[(*8*)] (*9*) "Ready delivery contract" means a contract which provides for delivery and payment of price *either immediately or* within such number of days *not exceeding seven* after the date of the contract and under such conditions as the Provincial Government may, from time to time, by notification in the *Official Gazette*, specify in this behalf in respect of any particular goods;

[(*9*)] (*10*) "Recognised association" means an association which is for the time being recognised by the Provincial Government as provided in section 3;

[(*10*)] (*11*) "Securities" includes shares, scrips, stocks, bonds, debentures, debenture stocks, or other marketable security of a like nature in or of any incorporate company or other body corporate and Government securities.

Recognition.

3. (*1*) Any association desirous of being recognised for the purposes of this Act shall make an application in writing to the Provincial Government for such recognition and shall, along with the application, submit rules relating *in general to its constitution and management and in particular* to —

(*a*) the management of the association by a governing body and the constitution of such governing body;

(*b*) the powers and duties of the governing body *office bearers* and the manner in which its business shall be transacted;

(*c*) the admission of various classes of members by the association and the exclusion, suspension, expulsion and readmission of such members;

(*d*) *the formation and registration of partnerships and the appointment of authorised representatives and clerks;*

[(*d*)] (*e*) such other matters as the Provincial Government may by order direct.

(*2*) The association shall also furnish such other information in regard to such association as the Provincial Government may require.

(3) The Provincial Government may direct that there shall be no limitation of the number of the members of the association or such limitation of the number as the Provincial Government may impose; and may require the association to incorporate in the rules such direction and the conditions, if any, accompanying it.

(4) The Provincial Government may require such association to provide in its rules that the Provincial Government may appoint any person, whether a member of the association or not, to be the President or a member of the governing body of such association.

[*(3)*] *(5)* If the Provincial Government is satisfied that the rules [submitted by] *of* the association are suitable in the interest of the trade *and are in public interest,* the Provincial Government may recognise the association. No alterations or additions shall be made in the rules of a recognised association without the prior approval of the Provincial Government.

[*(4)*] *(6)* If the Provincial Government considers that the recognition given to any association should, [for any reason] in the interest of the trade, *or in public interest,* be withdrawn, the Provincial Government may, after giving to the association an opportunity to explain why recognition should not be withdrawn, withdraw the recognition given to the said association, and such association shall thereupon cease to be a recognised association :

Provided that such withdrawal of the recognition of any association shall not in any manner affect the validity of any contract entered into [in accordance with the bye-laws of such association prior to the date of the withdrawal of the recognition] *or made prior to the date of the withdrawal of the recognition and the Provincial Government may make such provision as it deems fit for the due fulfilment of such contracts which may be outstanding at such date.*

[**4.** Notwithstanding anything contained in this Act or any other law for the time being in force, the Provincial Government may, if it deems fit,— [Powers of Provincial Government to remove and appoint President, members of governing body, etc.]

(*1*) remove the President or a member of a recognised association ;

(*2*) appoint any person, whether a member of a recognised association or not, to be the President or a member of the governing body of such association ;

(*3*) supersede any governing body and appoint another governing body for such association.]

4. (1) (i) Notwithstanding anything contained in this Act, or any other law for the time being in force, the Provincial Government may, if it deems fit, by an order published in the Official Gazette, declare the governing body of any recognised association to be superseded and may appoint such person or persons to exercise and perform all the powers and duties of the governing body ; and when more persons than one are appointed may appoint one of such persons to be the president : *Power of Provincial Government to supersede the governing body, and suspend business.*

Provided that a reasonable opportunity shall be given to the governing body to explain why it should not be superseded unless the Provincial Government considers that an emergency has arisen when in the interest of the trade or in public interest immediate supersession is necessary.

(ii) The members of the governing body which has been superseded shall, as from the date of the order of supersession cease to be such members.

(iii) The person or persons appointed under clause (i) shall hold office for such period as the Provincial Government may, by notification in the Official Gazette, appoint and the Provincial Government may from time to time by like notification extend such period.

(iv) The person or persons appointed under clause (i) may exercise and perform all the powers and duties of the governing body which has been superseded.

(v) When a person or persons have been appointed under clause (i), all such property of the recognised association as such person or persons may by order in writing declare to be necessary for carrying out the purposes of this Act, shall vest in such person or persons as the case may be. The property so vested, or which such person or persons may have acquired shall, on the determination of the period of office of such person or persons, re-vest or vest, as the case may be, in the recognised association.

(vi) On the determination of the period referred to in clause (iii) the recognised association shall forthwith re-constitute a governing body in accordance with its rules : provided that until the governing body is so re-constituted the person or persons appointed under clause (i) shall continue to exercise and perform their powers and duties.

(2) If in the interest of the trade or in public interest, the Provincial Government considers it necessary to do so, the Provincial Government may by an order published in the Official Gazette direct a recognised association to suspend its business for such period and subject to such conditions as may be specified in the order and the Provincial Government may from time to time by like order extend such period.

Power of Provincial Government to make rules and add to, etc., articles of association.

5. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any rules made by a recognised association or may make any rules for all or any of the matters, specified in [clauses (*a*) to (*c*) of] sub-sections (*1*) *to* (*4*) of sections 3, or *require such associations to* add to, vary or rescind [the] *its* articles of association [of such recognised association.]

(2) Rules, or any addition to, or variation or rescission of rules [or of articles of association] made under sub-section (1) shall be subject to the condition of previous publication :

Provided that the Provincial Government may in the interest of the trade *or in public interest* dispense with the condition of previous publication.

(3) Rules or any addition to or variation or rescission of rules [or of articles of association] made under this section shall be published in the *Official Gazette* and shall be deemed to have been made by the recognised association.

Power of recognised association to make, add to, vary or rescind bye-laws.

6. (1) Any recognised association may, subject to the sanction of the Provincial Government, make and, from time to time, add to, vary or rescind bye-laws for the regulation and control of forward contracts in goods for which such association has been recognised.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the times during which such markets shall remain open or closed and regulating the hours of trade ;

(b) a clearing house for the periodical settlement of contracts and the differences thereunder, *for the delivery of and payment for goods* and for the passing on of delivery orders and the regulation and maintenance of such clearing house ;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house ;

(d) fixing, altering or postponing settling days ;

(e) determining and declaring the market rates for goods ;

(f) the terms, conditions and incidents of contracts and the forms of such contracts as are in writing ;

(g) regulating the *entering into*, making, performance, recission and termination of contracts, including contract between *members, or between* a commission agent and his constituent or between a broker and his constituent or between a *jatthavala* or *muccadum* and his constituent or between a member [and non-member] of the recognised association, *and a person who is not a member*, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents, *muccadums* and brokers not parties to such contracts ;

(h) the *admission and* prohibition of specified classes or types of *goods or of* dealings in goods by a member of the recognised association ;

(*i*) the method and procedure for settlement of claims and disputes *including settlement by arbitration;*

(*j*) the levy and recovery of fees, fines and penalties;

(*k*) regulating the course of business between parties to contracts in any capacity;

(*l*) fixing of a scale of brokerage and other charges;

(*m*) the making, *comparing,* settling and closing of bargains;

(*n*) *the regulation of fluctuations in rates and prices;*

[(*n*)] (*o*) emergencies and the exercise of powers in such emergencies;

[(*o*)] (*p*) the regulation of dealings by members for their own account;

[(3) The bye-laws may provide that a contravention thereof shall be punishable with fine not exceeding Rs. 1,000.]

(3) *The bye-laws may provide that the contravention of any of the bye-laws shall—*

(*i*) *make a contract which is entered into, made or is to be performed otherwise than in accordance with the bye-law void or illegal;*

(*ii*) *render the member liable to expulsion, suspension, fine or other non-monetary penalty;*

(4) Bye-laws or any addition to or variation or rescission of such bye-laws made under this section shall be subject to the condition of previous publication unless such condition is dispensed with by the Provincial Government in the interest of the trade *or in public interest* and when sanctioned by the Provincial Government shall be published in the *Official Gazette.*

Power of Provincial Government to make bye-laws.

7. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any bye-laws made by a recognised association under section 6 or may make any bye-laws for all or any of the matters specified in the said section 6.

[(2) Bye-laws, or any addition to, or variation or rescission of bye-laws made under sub-section (*1*) may provide for the regulation and control of contracts entered into previously to and subsisting at the date of the making of the bye-law, addition, variation or rescission, and all rights and obligations in respect of the said contracts shall thereafter be determined accordingly.]

(2) *Bye-laws, or any addition to, or variation or rescission of bye-laws made under sub-section (1) may provide for the regulation and control of contracts entered into or made previously to and subsisting at the date of making of the bye-law, addition, variation or rescission, but not so as to affect contracts entered into or made before a week previous to such*

date, and all rights and obligations in respect of contracts so regulated and controlled shall thereafter be determined accordingly.

(3) Bye-laws or any addition to, variation or rescission of bye-laws made under sub-section (*1*) shall be subject to the condition of previous publication :

Provided that the Provincial Government may, in the interest of the trade *or in public interest*, dispense with the condition of previous publication.

(*4*) Bye-laws or any addition to, or variation or rescission of bye-laws made under this section shall be published in the *Official Gazette* and shall be deemed to have been made by the recognised association.

[**8.** (*1*) Every forward contract for the purchase or sale of, or relating to, any goods to which the provisions of section 3 apply made or to be performed in any notified local area which is not made— [Illegal contracts and penalty.]

(*a*) in accordance with the bye-laws made under section 6 or 7 relating to the making of such contracts, or

(*b*) between members or through a member of a recognised association,

shall be illegal and no claim of any description in respect of such contract shall be entertained in any civil court.]

8. (1) Every forward contract for the sale or purchase of, or relating to, any goods specified in the notification under sub-section (3) of section 1 which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed— *Illegal contracts and penalty.*

(a) in accordance with such bye-laws made under section 6 or 7 relating to the entering into, making or performance of such contracts as may be specified in the bye-laws, or

(b) (i) between members of a recognised association,

(ii) through a member of a recognised association, or

(iii) with a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye-laws so provide, of the person entering into or making the contract,

and no claim of any description in respect of such contract shall be entertained in any civil court.

(2) Any person entering into *or making* such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Options in goods illegal.

9. (*1*) Notwithstanding anything contained in this Act or in any other law for the time being in force on a notification being issued by the Provincial Government in the *Official Gazette*, options or such kinds of options in such goods and in [such areas] *the whole of the Province of Bombay or such part thereof* as may be specified in the notification shall be illegal.

(*2*) Any person entering into any option made illegal under sub-section (*1*) shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Penalty for owning or keeping place used for entering into contracts in contravention of Act, etc.

10. Any person who in any notified [local] area [in respect of goods to which the provisions of section 3 apply]—

(*1*) owns or keeps a place, other than that of a recognised association, which is used for the purpose of entering into *or making or performing in whole or in part* forward contracts in goods *specified in the notification under sub-section (3) of section 1* and knowingly permits such place to be used for such purposes ; or

(*2*) *without the permission of the Provincial Government* organises, or assists in organising or becomes a member of any association, other than a recognised association, established for the purpose of assisting in entering into *or making or performing in whole or in part* forward contracts in goods ; or

(*3*) manages, controls or assists in keeping any place, other than that of a recognised association, which is used for the purpose of entering into *or making or performing in whole or in part* forward contracts in goods or at which such contracts are recorded or adjusted or rights or liabilities arising out of such contracts or options are adjusted, regulated or enforced in any manner whatsoever ; or

(*4*) not being a member *of a recognised association* wilfully represents to or induces any person to believe that he is a member of a recognised association or that a forward contract can be entered into *or made or performed in whole or in part* under this Act through him, [shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.] *or*

(*5*) *not being a member of a recognised association or his agent authorised under the rules or bye-laws of such association canvasses, advertises or touts in any manner either for himself or for any other person, for any business connected with forward contracts in such goods ; or*

(b) joins, gathers or assists in gathering any person or persons for making bids or offers or for entering into or making any forward contracts in such goods at a place other than the place of business specified in the bye-laws of any recognised association,

shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

11. No court [other than] *inferior to* that of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence punishable under this Act. Jurisdiction under Act.

12. Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) or a firm, every director, manager, secretary, agent or other officer or person concerned with the management thereof and every partner of the firm shall, unless he proves that the offence was committed without his knowledge or consent be deemed to be guilty of such offence. *Offences by corporations and firms.*

13. No suit, prosecution, or other legal proceedings whatsoever shall be entertained in any Court against the governing body or any office-bearer or servant of a recognised association or against the person or persons appointed under clause (i) of sub-section (1) of section 4 for anything in good with done or intended to be done in pursuance or execution of this Act or rules or bye-laws made thereunder. *Bar of suits and proceedings against officers etc.*

[**12.**] *14.* (*1*) On the date on which an association is recognised under section 3 in any area in respect of securities, the Bombay Securities Contracts Control Act, 1925, and when an association is recognised under section 3 in the City of Bombay and the Island of Salsette in respect of cotton, the Bombay Cotton Contracts Act, 1932, shall cease to have force in such area. Repeal of enactments.

Bom. VIII of 1925.

Bom. IV of 1932.

(*2*) On the date on which an association is recognised under section 3 in any area in respect of cotton, the Bombay Options in Cotton Prohibition Act, 1939, shall cease to have force in such area.

Bom. XXV of 1939.

[**13.**] *15.* (*1*) Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect— Savings.

(*a*) the terms and incidents of any forward contracts in cotton or securities made or effected before the date on which the provisions of this Act come into force and to which the Acts hereby repealed applied;

(*b*) the terms and incidents of any options in cotton made or effected before the date on which the Bombay Options in Cotton Prohibition Ordinance, 1939, came into force;

(*c*) the validity, invalidity, effect or consequences of anything already done or suffered, in case of such contracts before the coming into force of this Act, and in the case of such options before the date of the coming into force of the said Ordinance ;

(*d*) any right, title, obligation or liability already acquired, accrued or incurred in regard to such contracts before the date of the coming into force of this Act and in regard to such options before the date of the coming into force of the said Ordinance ;

(*e*) any remedy or proceeding in respect of such right, title, obligation or liability ;

(*f*) anything done in the course of any proceeding pending in any Court, in case of such contracts on the date of the coming into force of the provisions of this Act and in the case of such options on the date of the coming into force of the said Ordinance, and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

(2) The provisions of sub-section (*1*) shall apply to forward contracts for the purchase or sale of any other goods to which the provisions of this Act may, from time to time, be applied under sub-section (*3*) of section 1 entered into, *made or to be performed* before the date on which a notification in respect of such goods may be published under the said sub-section.

S. K. SHEODE,
Secretary to the Bombay
Legislative Assembly.

Council Hall,
Poona, 1st November 1947.

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

L. A. BILL No. XLII OF 1947.

A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

(As read for the third time and passed by the Legislative Assembly on the 5th November 1947.)

WHEREAS it is expedient to regulate and control forward contracts, to prohibit options and to provide for certain other purposes hereinafter appearing; it is hereby enacted as follows:—

Short title and operation.

1. (*1*) This Act may be called the Bombay Forward Contracts Control Act, 1947.

(*2*) This section shall come into force at once.

(*3*) The Provincial Government may by notification in the *Official Gazette* direct that all the remaining sections other than sections 4, 5 and 7 shall come into force in the whole of the Province of Bombay or such part thereof and on such date and in their application to such goods as may be specified in the notification.

(*4*) The Provincial Government may also by notification in the *Official Gazette* direct that section 4, 5 or 7 shall come into force in the whole of the Province of Bombay or such part thereof and on such date and in its application to such goods as may be specified in the notification.

Definitions.

2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Association" means any association, organization or body of individuals, whether incorporated or not,

established for the purpose of regulating and controlling business of the sale or purchase of, or other transactions relating to, any goods;

(2) "Contract" means a contract entered into, made or to be performed in whole or in part in any notified area relating to the sale or purchase of any goods to which this Act applies:

Provided that the Provincial Government may by notification in the Official Gazette direct any contract or class of contracts to be excluded from the provisions of this Act, subject to such conditions as the Provincial Government may deem fit to impose;

(3) "Forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(4) "Goods" means any kind of moveable property and includes securities but does not include money or actionable claims;

(5) "Government security" means a Government security as defined in the Indian Securities Act, 1920;

(6) "Notified area" means any area specified in the notification under sub-section (3) of section 1;

(7) "Option in goods" means a contract for the purchase or sale of a right to buy, or a right to sell, or a right to buy or sell goods in future and includes a gully, a teji, a mandi or a teji-mandi in goods;

(8) "Person" includes a firm;

(9) "Ready delivery contract" means a contract which provides for delivery and payment of price either immediately or within such number of days not exceeding seven after the date of the contract and under such conditions as the Provincial Government may, from time to time, by notification in the *Official Gazette*, specify in this behalf in respect of any particular goods;

(10) "Recognised association" means an association which is for the time being recognised by the Provincial Government as provided in section 3;

(11) "Securities" includes shares, scrips, stocks, bonds, debentures, debenture stocks, or other marketable security of a like nature in or of any incorporate company or other body corporate and Government securities.

Recognition.

3. (1) Any association desirous of being recognised for the purposes of this Act shall make an application in writing to the Provincial Government for such recognition and shall, along with the application submit rules relating in general to its constitution and management and in particular to—

(a) the management of the association by a governing body and the constitution of such governing body;

(*b*) the powers and duties of the office bearers and the governing body and the manner in which its business shall be transacted;

(*c*) the admission of various classes of members by the association and the exclusion, suspension, expulsion and readmission of such members;

(*d*) the formation and registration of partnerships and the appointment of authorised representatives and clerks;

(*e*) such other matters as the Provincial Government may by order direct.

(2) The association shall also furnish such other information in regard to such association as the Provincial Government may require.

(3) The Provincial Government may direct that there shall be no limitation of the number of the members of the association or such limitation of the number as the Provincial Government may impose, and may require the association to incorporate in the rules such direction and the conditions, if any, accompanying it.

(4) The Provincial Government may require such association to provide in its rules that the Provincial Government may appoint any person, whether a member of the association or not, to be the President or a member of the governing body of such association.

(5) If the Provincial Government is satisfied that the rules of the association are suitable in the interest of the trade and are in public interest, the Provincial Government may recognise the association. No alterations or additions shall be made in the rules of a recognised association without the prior approval of the Provincial Government.

(6) If the Provincial Government considers that the recognition given to any association should, in the interest of the trade or in public interest, be withdrawn, the Provincial Government may, after giving to the association an opportunity to explain why recognition should not be withdrawn, withdraw the recognition given to the said association, and such association shall thereupon cease to be a recognised association:

Provided that such withdrawal of the recognition of any association shall not in any manner affect the validity of any contract entered into or made prior to the date of the withdrawal of the recognition and the Provincial Government may make such provision as it deems fit for the due fulfilment of such contracts which may be outstanding at such date.

Power of Provincial Government to supersede the governing body, and suspend business.

4. (1) (*i*) Notwithstanding anything contained in this Act, or any other law for the time being in force, the Provincial Government may, if it deems fit, by an order published in the *Official Gazette*, declare the governing body of any recognised association to be superseded and may appoint such person or persons to exercise and perform all the powers and duties of the governing body; and when more persons than one are appointed may appoint one of such persons to be the President:

Provided that a reasonable opportunity shall be given to the governing body to explain why it should not be superseded unless the Provincial Government considers that an emergency has arisen when in the interest of the trade or in public interest immediate supersession is necessary.

(*ii*) The members of the governing body which has been superseded shall, as from the date of the order of supersession cease to be such members.

(*iii*) The person or persons appointed under clause (*i*) shall hold office for such period as the Provincial Government may, by notification in the *Official Gazette*, appoint and the Provincial Government may from time to time by like notification extend such period.

(*iv*) The person or persons appointed under clause (*i*) may exercise and perform all the powers and duties of the governing body which has been superseded.

(*v*) When a person or persons have been appointed under clause (*i*), all such property of the recognised association as such person or persons may by order in writing declare to be necessary for carrying out the purposes of this Act, shall vest in such person or persons, as the case may be. The property so vested, or which such person or persons may have acquired shall, on the determination of the period of office of such person or persons, re-vest or vest, as the case may be, in the recognised association.

(*vi*) On the determination of the period referred to in clause (*iii*) the recognised association shall forthwith re-constitute a governing body in accordance with its rules : provided that until the governing body is so re-constituted the person or persons appointed under clause (*i*) shall continue to exercise and perform their powers and duties.

(*2*) If in the interest of the trade or in public interest, the Provincial Government considers it necessary to do so, the Provincial Government may by an order published in the *Official Gazette* direct a recognised association to suspend its business for such period and subject to such conditions as may be specified in the order and the Provincial Government may from time to time by like order extend such period.

Power of Provincial Government to make rules and add to, etc., articles of association.

5. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any rules made by a recognised association or may make any rules for all or any of the matters, specified in sub-sections (*1*) to (*4*) of section 3, or require such association to add to vary or rescind its articles of association.

(2) Rules, or any addition to, or variation or rescission of, rules made under sub-section (1) shall be subject to the condition of previous publication:

Provided that the Provincial Government may, in the interest of the trade or in public interest dispense with the condition of previous publication.

(3) Rules or any addition to, or variation or rescission of, rules made under this section shall be published in the *Official Gazette* and shall be deemed to have been made by the recognised association.

Power of recognised association to make, add to, vary or rescind bye-laws.

6. (1) Any recognised association may, subject to the sanction of the Provincial Government, make and, from time to time, add to, vary or rescind bye-laws for the regulation and control of forward contracts in goods for which such association has been recognised.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the times during which such markets shall remain open or closed and regulating the hours of trade;

(b) a clearing house for the periodical settlement of contracts and the differences thereunder, for the delivery of and payment for goods and for the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(d) fixing, altering or postponing settling days;

(e) determining and declaring the market rates for goods

(f) the terms, conditions and incidents of contracts and the forms of such contracts as are in writing;

(g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members, or between a commission agent and his constituent or between a broker and his constituent or between a *jatthawala* or *muccadum* and his constituent or between a member of the recognised association, and a person who is not a member, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents, *muccadums* and brokers not parties to such contracts;

(h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(*i*) the method and procedure for settlement of claims and disputes including settlement by arbitration;

(*j*) the levy and recovery of fees, fines and penalties;

(*k*) regulating the course of business between parties to contracts in any capacity;

(*l*) fixing of a scale of brokerage and other charges;

(*m*) the making, comparing, settling and closing of bargains;

(*n*) the regulation of fluctuations in rates and prices;

(*o*) emergencies and the exercise of powers in such emergencies;

(*p*) the regulation of dealings by members for their own account.

(*3*) The bye-laws may provide that the contravention of any of the bye-laws shall—

(*i*) make a contract which is entered into, made or is to be performed otherwise than in accordance with the bye-law void or illegal;

(*ii*) render the member liable to expulsion, suspension, fine or other non-monetary penalty.

(*4*) Bye-laws or any addition to or variation or rescission of such bye-laws made under this section shall be subject to the condition of previous publication unless such condition is dispensed with by the Provincial Government in the interest of the trade or in public interest and when sanctioned by the Provincial Government shall be published in the *Official Gazette*.

Power of Provincial Government to make bye-laws.

7. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any bye-laws made by a recognised association under section 6 or may make any bye-laws for all or any of the matters specified in the said section 6.

(*2*) Bye-laws, or any addition to, or variation or rescission of bye-laws made under sub-section (*1*) may provide for the regulation and control of contracts entered into or made previously to and subsisting at the date of making of the bye-law, addition, variation or rescission, but not so as to affect contracts entered into or made before a week previous to such date, and all rights and obligations in respect of contracts so regulated and controlled shall thereafter be determined accordingly.

(3) Bye-laws or any addition to, variation or rescission of bye-laws made under sub-section (1) shall be subject to the condition of previous publication :

Provided that the Provincial Government may, in the interest of the trade or in public interest, dispense with the condition of previous publication.

(4) Bye-laws or any addition to, or variation or rescission of bye-laws made under this section shall be published in the Official Gazette and shall be deemed to have been made by the recognised association.

Illegal contracts and penalty.

8. (1) Every forward contract for the sale or purchase of, or relating to, any goods specified in the notification under sub-section (3) of section 1 which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed—

(a) in accordance with such bye-laws made under section 6 or 7 relating to the entering into, making or performance of such contracts as may be specified in the bye-laws, or

(b) (i) between members of a recognised association,

(ii) through a member of a recognised association, or

(iii) with a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye-laws so provide, of the person entering into or making the contract,

and no claim of any description in respect of such contract shall be entertained in any civil court.

(2) Any person entering into or making such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Options in goods illegal.

9. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force on a notification being issued by the Provincial Government in the *Official Gazette*, options or such kinds of options in such goods and in the whole of the Province of Bombay or such part thereof as may be specified in the notification shall be illegal.

(2) Any person entering into any option made illegal under sub-section (1) shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Penalty for owning or keeping place used for entering into forward contracts in contravention of Act, etc.

10. Any person who in any notified area—

(1) owns or keeps a place, other than that of a recognised association, which is used for the purpose of entering into or making or performing in whole or in part forward contracts in goods specified in the notification

under sub-section (3) of section 1 and knowingly permits such place to be used for such purposes; or

(2) without the permission of the Provincial Government organises, or assists in organising or becomes a member of any association, other than a recognised association, established for the purpose of assisting in entering into or making or performing in whole or in part forward contracts in such goods; or

(3) manages, controls or assists in keeping any place, other than that of a recognised association, which is used for the purpose of entering into or making or performing in whole or in part forward contracts in such goods or at which such contracts are recorded or adjusted or rights or liabilities arising out of such contracts or options are adjusted, regulated or enforced in any manner whatsoever; or

(4) not being a member of a recognised association wilfully represents to or induces any person to believe that he is a member of a recognised association or that a forward contract can be entered into or made or performed in whole or in part under this Act through him, or

(5) not being a member of a recognised association or his agent authorised under the rules or bye-laws of such association canvasses, advertises or touts in any manner either for himself or for any other person, for any business connected with forward contracts in such goods; or

(6) joins, gathers or assists in gathering any person or persons for making bids or offers or for entering into or making any forward contracts in such goods at a place other than the place of business specified in the bye-laws of any recognised association,

shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Jurisdiction under Act.

11. No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence punishable under this Act.

Offences by corporations and firms

12. Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) or a firm, every director, manager, secretary, agent or other officer or person concerned with the management thereof and every partner of the firm shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Bar of suits and proceedings against officers etc.

13. No suit, prosecution, or other legal proceedings whatsoever shall be entertained in any Court against the governing body or any office-bearer or servant of a recognised association or against the person or persons appointed under

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clause (i) of sub-section (*1*) of section 4 for anything in good faith done or intended to be done in pursuance or execution of this Act or rules or bye-laws made thereunder.

Repeal of enactments.

14. (*1*) On the date on which an association is recognised under section 3 in any area in respect of securities, the Bombay Securities Contracts Control Act, 1925, and when an association is recognised under section 3 in the City of Bombay and the Island of Salsette in respect of cotton, the Bombay Cotton Contracts Act, 1932, shall cease to have force in such area.

Bom. VIII of 1925.

Bom. IV of 1932.

(*2*) On the date on which an association is recognised under section 3 in any area in respect of cotton, the Bombay Options in Cotton Prohibition Act, 1939, shall cease to have force in such area.

Bom. XXV of 1939.

Savings.

15. (*1*) Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) the terms and incidents of any forward contracts in cotton or securities entered into or made before the date on which the provisions of this Act come into force and to which the Acts hereby repealed applied;

(*b*) the terms and incidents of any options in cotton entered into or made before the date on which the Bombay Options in Cotton Prohibition Ordinance, 1939, came into force;

(*c*) the validity, invalidity, effect or consequences of anything already done or suffered, in case of such contracts before the coming into force of the provisions of this Act, and in the case of such options before the date of the coming into force of the said Ordinance;

(*d*) any right, title, obligation or liability already acquired, accrued or incurred in regard to such contracts before the date of the coming into force of the provisions of this Act and in regard to such options before the date of the coming into force of the said Ordinance;

(*e*) any remedy or proceeding in respect of such right, title, obligation or liability;

(*f*) anything done in the course of any proceeding pending in any Court, in case of such contracts on the date of the coming into force of the provisions of this Act and in the case of such options on the date of the coming into force of the said Ordinance, and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

(*2*) The provisions of sub-section (*1*) shall apply to forward contracts for the purchase or sale of any other goods to which the provisions of this Act may, from time to time, be applied under sub-section (*3*) of section 1 entered into or made before the date on which a notification in respect of such goods may be published under the said sub-section.

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STATEMENT OF OBJECTS AND REASONS.

At present Government has no control over forward markets in commodities other than cotton and stocks and shares. The complaint has frequently been made that in view of this lack of control there is often excessive speculation in commodity markets the effects of which have proved disadvantageous both to producers and to genuine traders. The complaint has also been made that such control as Government exercises over the cotton and stock markets under the Bombay Cotton Contracts Act, 1932, and the Bombay Securities Contracts Control Act, 1925, has proved ineffective. These acts provide that forward contracts other than those made through recognised associations are void in law; but experience has shown that such a provision does not go far enough to be effective in actual practice. In fact, forward trading takes place outside recognised associations and in a manner which is detrimental to genuine trade interests. The Report of the Committee of the Cabinet on the control of forward trading in cotton in this Province contains the recommendation that Government should, in order to make its control more effective, take power to impose bye-laws on a recognised association in all matters, to nominate the President or one or more members of the Board and to supersede the entire Board of such association. The Committee has also recommended that contracts not in accordance with the bye-laws of a recognised association should not merely be void as at present but be made illegal and parties thereto rendered liable to punishment, and further that it should be a penal offence for any person to organise, assist in organising or be a member of an unrecognised association. The Bill while consolidating the present law regarding control of forward markets, also incorporates provisions on the lines recommended by the Committee, for tightening up Government control over such markets. Further, it enables Government to extend the Act or certain parts of it not only to cotton and stocks and shares but also to other goods and to such areas as it may specify in a notification. Clauses 3, 6, 8 and 10 which may be notified together under sub-clause (3) of clause 1 of the Bill, provide for the recognition of an association in respect of any commodity and for the prior approval of its bye-laws by Government. Further under these clauses any forward contract not in accordance with the bye-laws of a recognised association is illegal and the organising, managing or becoming a member of an unrecognised association, is a penal offence. Clauses 4, 5 and 7, any or all of which may be notified in addition to the clauses already mentioned, provide for fuller powers which include the powers to impose rules and bye-laws on a recognised association, to nominate the President or one or more members of the Board, or to supersede the entire Board including the President of such association. Clause 9 enables Government to declare that options or such kinds of options in such goods and in such areas as may be notified, shall be illegal.

Dated 6th September 1947. VAIKUNTH L. MEHTA.

Government of Bombay

LEGAL DEPARTMENT

[L. A. BILL No. XLII OF 1947.]

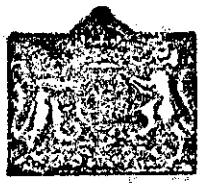
(As read for the third time and passed by
Legislative Assembly on the 5th November 1

A Bill to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

[Mr. VAIKUNTH L. MEHTA, M.L.A.]

BOMBAY : PRINTED AT THE GOVERNMENT CENTRAL PRESS.

Registered No. B-1



The Bombay Government Gazette

PUBLISHED BY AUTHORITY

SATURDAY, 7TH FEBRUARY 1948.

Separate paging is given to this Part in order that it may be filed as a separate compilation.

PART IV

(1) Acts of the Local Legislature of the Bombay Province and (2) Acts of the Indian Legislature assented to by the Governor General.

CONTENTS.

	Pages
BOMBAY ACT No. LXIV OF 1947—An Act to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay	122-130

The following Act of the Bombay Legislature having been assented to by the Governor General on the 30th January 1948 is hereby published for general information.

P. M. LAD,
Secretary to the Government of Bombay,
Legal Department.

BOMBAY ACT No. LXIV OF 1947.

(First published, after having received the assent of the Governor General, in the "Bombay Government Gazette" on the 7th February 1948.)

An Act to provide for the regulation and control of forward contracts, for prohibition of options and for certain other purposes in the Province of Bombay.

WHEREAS it is expedient to regulate and control forward contracts, to prohibit options and to provide for certain other purposes hereinafter appearing; It is hereby enacted as follows:—

Short title and operation.

1. (*1*) This Act may be called the Bombay Forward Contracts Control Act, 1947.

(*2*) This section shall come into force at once.

(*3*) The Provincial Government may by notification in the *Official Gazette* direct that all the remaining sections other than sections 4, 5 and 7 shall come into force in the whole of the Province of Bombay or such part thereof, and on such date and in their application to such goods as may be specified in the notification.

(*4*) The Provincial Government may also by notification in the *Official Gazette* direct that section 4, 5 or 7 shall come

into force in the whole of the Province of Bombay or such part thereof and on such date and in its application to such goods as may be specified in the notification.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

(*1*) "Association" means any association, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling business of the sale or purchase of, or other transactions relating to, any goods;

(*2*) "Contract" means a contract entered into, made or to be performed in whole or in part in any notified area relating to the sale or purchase of any goods to which this Act applies:

Provided that the Provincial Government may by notification in the *Official Gazette* direct any contract or class of contracts to be excluded from the provisions of this Act, subject to such conditions as the Provincial Government may deem fit to impose;

(*3*) "Forward contract" means a contract for the delivery of goods at a future date and which is not a ready delivery contract;

(*4*) "Goods" means any kind of moveable property and includes securities but does not include money or actionable claims;

(*5*) "Government security" means a Government security as defined in the Indian Securities Act, 1920; X of 1920.

(*6*) "Notified area" means any area specified in the notification under sub-section (*3*) of section 1;

(*7*) "Option in goods" means a contract for the purchase or sale of a right to buy, or a right to sell, or a right to buy or sell goods in future and includes a *gully*, a *teji*, a *mandi* or a *teji-mandi* in goods;

(*8*) "Person" includes a firm;

(*9*) "Ready delivery contract" means a contract which provides for delivery and payment of price either immediately or within such number of days not exceeding seven after the date of the contract and under such conditions as the Provincial Government may, from time to time, by notification in the *Official Gazette*, specify in this behalf in respect of any particular goods;

(*10*) "Recognised association" means an association which is for the time being recognised by the Provincial Government as provided in section 3;

(*11*) "Securities" includes shares, scrips, stocks, bonds, debentures, debenture stocks, or other marketable security of a like nature in or of any incorporate company or other body corporate and Government securities.

Recognition. 3. (*1*) Any association desirous of being recognised for the purposes of this Act shall make an application in writing to the Provincial Government for such recognition and shall, along with the application, submit rules relating in general to its constitution and management and in particular to—

(*a*) the management of the association by a governing body and the constitution of such governing body;

(*b*) the powers and duties of the office bearers and the governing body and the manner in which its business shall be transacted ;

(*c*) the admission of various classes of members by the association and the exclusion, suspension, expulsion and readmission of such members ;

(*d*) the formation and registration of partnerships and the appointment of authorised representatives and clerks ;

(*e*) such other matters as the Provincial Government may by order direct.

(*2*) The association shall also furnish such other information in regard to such association as the Provincial Government may require.

(*3*) The Provincial Government may direct that there shall be no limitation of the number of the members of the association or such limitation of the number as the Provincial Government may impose, and may require the association to incorporate in the rules such direction and the conditions, if any, accompanying it.

(*4*) The Provincial Government may require such association to provide in its rules that the Provincial Government may appoint any person, whether a member of the association or not, to be the President or a member of the governing body of such association.

(*5*) If the Provincial Government is satisfied that the rules of the association are suitable in the interest of the trade and are in public interest, the Provincial Government may recognise the association. No alterations or additions shall be made in the rules of a recognised association without the prior approval of the Provincial Government.

(*6*) If the Provincial Government considers that the recognition given to any association should, in the interest of the trade or in public interest, be withdrawn, the Provincial Government may, after giving to the association an opportunity to explain why recognition should not be withdrawn, withdraw the recognition given to the said association, and such association shall thereupon cease to be a recognised association :

Provided that such withdrawal of the recognition of any association shall not in any manner affect the validity of any contract entered into or made prior to the date of the withdrawal of the recognition and the Provincial Government may make such provision as it deems fit for the due fulfilment of such contracts which may be outstanding at such date.

Power of Provincial Government to supersede the governing body, and suspend business.

4. (*1*) (*i*) Notwithstanding anything contained in this Act, or any other law for the time being in force, the Provincial Government may, if it deems fit, by an order published in the *Official Gazette*, declare the governing body of any recognised association to be superseded and may appoint any person or persons to exercise and perform all the powers and duties of the governing body ; and when more persons than one are appointed may appoint one of such persons to be the President :

Provided that a reasonable opportunity shall be given to the governing body to explain why it should not be superseded unless the Provincial Government considers that an emergency has arisen when in the interest of the trade or in public interest immediate supersession is necessary.

(*ii*) The members of the governing body which has been superseded shall, as from the date of the order of supersession cease to be such members.

(*iii*) The person or persons appointed under clause (*i*) shall hold office for such period as the Provincial Government may, by notification in the *Official Gazette*, appoint and the Provincial Government may from time to time by like notification extend such period.

(*iv*) The person or persons appointed under clause (*i*) may exercise and perform all the powers and duties of the governing body which has been superseded.

(*v*) When a person or persons have been appointed under clause (*i*), all such property of the recognised association as such person or persons may by order in writing declare to be necessary for carrying out the purposes of this Act, shall vest in such person or persons, as the case may be. The property so vested, or which such person or persons may have acquired shall, on the determination of the period of office of such person or persons, re-vest or vest, as the case may be, in the recognised association.

(*vi*) On the determination of the period referred to in clause (*iii*) the recognised association shall forthwith re-constitute a governing body in accordance with its rules : provided that until the governing body is so re-constituted the person or persons appointed under clause (*i*) shall continue to exercise and perform their powers and duties.

(*2*) If in the interest of the trade or in public interest, the Provincial Government considers it necessary to do so, the Provincial Government may by an order published in the *Official Gazette* direct a recognised association to suspend its business for such period and subject to such conditions as may be specified in the order and the Provincial Government may from time to time by like order extend such period.

Power of Provincial Government to make rules and add to, etc., articles of association.

5. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any rules made by a recognised association or may make any rules for all or any of the matters, specified in sub-sections (*1*) to (*4*) of section 3, or require such association to add to, vary or rescind its articles of association.

(2) Rules, or any addition to, or variation or rescission of, rules made under sub-section (1) shall be subject to the condition of previous publication:

Provided that the Provincial Government may in the interest of the trade or in public interest dispense with the condition of previous publication.

(3) Rules or any addition to, or variation or rescission of, rules made under this section shall be published in the *Official Gazette* and shall be deemed to have been made by the recognised association.

Power of recognised association to make, add to, vary or rescind bye-laws.

6. (1) Any recognised association may, subject to the sanction of the Provincial Government, make and, from time to time, add to, vary or rescind bye-laws for the regulation and control of forward contracts in goods for which such association has been recognised.

(2) In particular, and without prejudice to the generality of the foregoing power, such bye-laws may provide for—

(a) the opening and closing of markets and the times during which such markets shall remain open or closed and regulating the hours of trade;

(b) a clearing house for the periodical settlement of contracts and the differences thereunder, for the delivery of and payment for goods and for the passing on of delivery orders and the regulation and maintenance of such clearing house;

(c) the number and classes of contracts in respect of which settlements shall be made or differences paid through the clearing house;

(d) fixing, altering or postponing settling days;

(e) determining and declaring the market rates for goods;

(f) the terms, conditions and incidents of contracts and the forms of such contracts as are in writing;

(g) regulating the entering into, making, performance, rescission and termination of contracts, including contracts between members, or between a commission agent and his constituent or between a broker and his constituent or between a *jatthawala* or *muccadum* and his constituent or between a member of the recognised association, and a person who is not a member, and the consequences of insolvency on the part of a seller or buyer or intermediary, the consequences of a breach or omission by a seller or buyer and the responsibility of commission agents, *muccadums* and brokers not parties to such contracts;

(h) the admission and prohibition of specified classes or types of goods or of dealings in goods by a member of the recognised association;

(*i*) the method and procedure for settlement of claims and disputes including settlement by arbitration;

(*j*) the levy and recovery of fees, fines and penalties;

(*k*) regulating the course of business between parties to contracts in any capacity;

(*l*) fixing of a scale of brokerage and other charges;

(*m*) the making, comparing, settling and closing of bargains;

(*n*) the regulation of fluctuations in rates and prices;

(*o*) emergencies and the exercise of powers in such emergencies;

(*p*) the regulation of dealings by members for their own account.

(*3*) The bye-laws may provide that the contravention of any of the bye-laws shall—

(*i*) make a contract which is entered into, made or is to be performed otherwise than in accordance with the bye-law void or illegal;

(*ii*) render the member liable to expulsion, suspension, fine or other non-monetary penalty.

(*4*) Bye-laws or any addition to or variation or rescission of such bye-laws made under this section shall be subject to the condition of previous publication unless such condition is dispensed with by the Provincial Government in the interest of the trade or in public interest and when sanctioned by the Provincial Government shall be published in the *Official Gazette*.

Power of Provincial Government to make bye-laws.

7. (*1*) If the Provincial Government is of opinion that it is expedient to do so, the Provincial Government may at any time add to, vary or rescind any bye-laws made by a recognised association under section 6 or may make any bye-laws for all or any of the matters specified in the said section 6.

(*2*) Bye-laws, or any addition to, or variation or rescission of bye-laws made under sub-section (*1*) may provide for the regulation and control of contracts entered into or made previously to and subsisting at the date of making of the bye-law, addition, variation or rescission, but not so as to affect contracts entered into or made before a week previous to such date, and all rights and obligations in respect of contracts so regulated and controlled shall thereafter be determined accordingly.

(3) Bye-laws or any addition to, variation or rescission of bye-laws made under sub-section (1) shall be subject to the condition of previous publication:

Provided that the Provincial Government may, in the interest of the trade or in public interest, dispense with the condition of previous publication.

(4) Bye-laws or any addition to, or variation or rescission of bye-laws made under this section shall be published in the *Official Gazette* and shall be deemed to have been made by the recognised association.

Illegal contracts and

8. (1) Every forward contract for the sale or purchase of, or relating to, any goods specified in the notification under sub-section (3) of section 1 which is entered into, made or to be performed in any notified area shall be illegal if it is not entered into, made or to be performed—

(a) in accordance with such bye-laws, made under section 6 or 7 relating to the entering into, making or performance of such contracts, as may be specified in the bye-laws, or

(b) (i) between members of a recognised association,

(ii) through a member of a recognised association, or

(iii) with a member of a recognised association, provided that such member has previously secured the written authority or consent, which shall be in writing if the bye-laws so provide, of the person entering into or making the contract,

and no claim of any description in respect of such contract shall be entertained in any civil court.

(2) Any person entering into or making such illegal contract shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine or with both.

Options in goods illegal.

9. (1) Notwithstanding anything contained in this Act or in any other law for the time being in force on a notification being issued by the Provincial Government in the *Official Gazette*, options or such kinds of options in such goods and in the whole of the Province of Bombay or such part thereof as may be specified in the notification shall be illegal.

(2) Any person entering into any option made illegal under sub-section (1) shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Penalty for owning or keeping place used for entering into forward contracts in contravention of Act, etc.

10. Any person who in any notified area—

(1) owns or keeps a place, other than that of a recognised association, which is used for the purpose of entering into or making or performing in whole or in part forward contracts in goods specified in the notification

under sub-section (3) of section 1 and knowingly permits such place to be used for such purposes; or

(2) without the permission of the Provincial Government organises, or assists in organising or becomes a member of any association, other than a recognised association, established for the purpose of assisting in entering into or making or performing in whole or in part forward contracts in such goods; or

(3) manages, controls or assists in keeping any place, other than that of a recognised association, which is used for the purpose of entering into or making or performing in whole or in part forward contracts in such goods or at which such contracts are recorded or adjusted or rights or liabilities arising out of such contracts or options are adjusted, regulated or enforced in any manner whatsoever; or

(4) not being a member of a recognised association wilfully represents to or induces any person to believe that he is a member of a recognised association or that a forward contract can be entered into or made or performed in whole or in part under this Act through him, or

(5) not being a member of a recognised association or his agent authorised under the rules or bye-laws of such association canvasses, advertises or touts in any manner either for himself or for any other person, for any business connected with forward contracts in such goods; or

(6) joins, gathers or assists in gathering any person or persons for making bids or offers or for entering into or making any forward contracts in such goods at a place other than the place of business specified in the bye-laws of any recognised association,

shall, on conviction, be punishable with imprisonment which may extend to six months or with fine or with both.

Jurisdiction under Act.

11. No court inferior to that of a Presidency Magistrate or a Magistrate of the First Class shall take cognizance of or try any offence punishable under this Act.

Offences by corporations and firms.

12. Where a person committing an offence under this Act is a company, or other body corporate, or an association of persons (whether incorporated or not) or a firm, every director, manager, secretary, agent or other officer or person concerned with the management thereof and every partner of the firm shall, unless he proves that the offence was committed without his knowledge or consent, be deemed to be guilty of such offence.

Bar of suits and proceedings against officers, etc.

13. No suit, prosecution, or other legal proceedings whatsoever shall be entertained in any Court against the governing body or any office-bearer or servant of a recognised association or against the person or persons appointed under

clause (*i*) of sub-section (*1*) of section 4 for anything in good faith done or intended to be done in pursuance or execution of this Act or rules or bye-laws made thereunder.

Repeal of enactments.

14. (*1*) On the date on which an association is recognised under section 3 in any area in respect of securities, the Bombay Securities Contracts Control Act, 1925, and when an association is recognised under section 3 in the City of Bombay and the Island of Salsette in respect of cotton, the Bombay Cotton Contracts Act, 1932, shall cease to have force in such area.

Bom. VIII of 1925.

Bom. IV of 1932.

(*2*) On the date on which an association is recognised under section 3 in any area in respect of cotton, the Bombay Options in Cotton Prohibition Act, 1939, shall cease to have force in such area.

Bom. XXV of 1939.

Savings.

15. (*1*) Nothing in this Act or any repeal effected thereby shall affect or be deemed to affect—

(*a*) the terms and incidents of any forward contracts in cotton or securities entered into or made before the date on which the provisions of this Act come into force and to which the Acts hereby repealed applied;

(*b*) the terms and incidents of any options in cotton entered into or made before the date on which the Bombay Options in Cotton Prohibition Ordinance, 1939, came into force;

Bom. Ordinance II of 1939.

(*c*) the validity, invalidity, effect or consequences of anything already done or suffered, in case of such contracts before the coming into force of the provisions of this Act, and in the case of such options before the date of the coming into force of the said Ordinance;

(*d*) any right, title, obligation or liability already acquired, accrued or incurred in regard to such contracts before the date of the coming into force of the provisions of this Act and in regard to such options before the date of the coming into force of the said Ordinance;

(*e*) any remedy or proceeding in respect of such right, title, obligation or liability;

(*f*) anything done in the course of any proceeding pending in any Court, in case of such contracts on the date of the coming into force of the provisions of this Act and in the case of such options on the date of the coming into force of the said Ordinance, and any such remedy or proceeding may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

(*2*) The provisions of sub-section (*1*) shall apply to forward contracts for the purchase or sale of any other goods to which the provisions of this Act may, from time to time, be applied under sub-section (*3*) of section 1 entered into or made before the date on which a notification in respect of such goods may be published under the said sub-section.

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